IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 391 OF 1994.

Shri Ramacustam Purshottam Shirodkar, major, married, Indian National, prematurely retired Senior Translator/ Superintendent of Bombay High Court, Panaji, r/o H.No.E-9, Manxer, Dr. Francisco de Almeida Road, Portaes, Panaji, Goa. ... Petitioner.

Versus

1. The Hon'ble Chief Justice of the High Court of Judicature of Bombay, Bombay High Court Bldg., Fort, Bombay-400 001.
2. High court of Judicature of Bombay, through its Registrar (Appellate Side) having office at High Court Building, Fort, Bombay-400 001. ... Respondents.

Mr. S.G. Dessai, Senior Advocate with Mr. D.B. Ambekar, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Addl. Govt. Advocate for the Respondents.

Coram: V.C. DAGA AND
P.V. HARDAS, JJ.

Date: 4th June 2002.

JUDGMENT (PER HARDAS, J.)

The petitioner, who was working as Senior Translator/Superintendent, by a Notice/Order which was served on the petitioner on 30th October 1993 was compulsorily retired, in public interest, with immediate effect. The Order/Notice of the High Court compulsorily retiring the petitioner with effect from 30th October 1993 is the subject matter of challenge in the present

petition. Today this petition was heard and dismissed by us for the reasons to be recorded later. Accordingly, reasons, based on the following facts, are being recorded herein.

2. The brief facts necessary for the decision of this petition are as hereunder:-

The petitioner has passed his B.A. (Hons.) and LL.B.. The petitioner, it is averred, has also passed 7th year of Lyceum (a Portuguese Course). The petitioner, it is stated is a 'Praveen' in Hindi. The petitioner was initially appointed as a Translator on 26th November 1966 in the Court of the then Judicial Commissioner of Goa, Daman and Diu, at Panaji, by the appointment Order dated 23rd November 1966. After his appointment as a Translator, the petitioner was transferred and appointed as an Interpreter in the District and Sessions Court, Panaji by an Order dated 11th November 1972. The petitioner was thereafter transferred back to the Court of the Judicial Commissioner from the Court of the District and Sessions Judge, Panaji, by an Order dated 29th September 1977 and was posted as a Translator in the Court of the Judicial Commissioner. The post of the Translator was Group 'C' Non-Gazetted post initially in the pay scale of Rs. 210-425 which was revised to Rs. 425-15-500-EB-15-560-20-640-EB-20-700-25-750.

3. By the High Court of Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Act, 1981, the

jurisdiction of the Bombay High Court was extended to the then Territory of Goa, Daman and Diu with effect from 30th October 1982, on which day a permanent Bench of the Bombay High Court started functioning at Panaji. Consequent to the extension of the jurisdiction, the petitioner was absorbed with effect from 30th October 1982 in the services of the Bombay High Court, Panaji Bench at Panaji as a Translator after obtaining the option from the petitioner. The absorption Order, dated 20th October 1982, reflects that the appointments were subject to eventual equation of posts and also pending results of Writ Petitions, if any, affecting appointments, fixation of seniority etc., of any member of the staff. The petitioner, by virtue of the Order dated 20th October 1982, was absorbed in the post of Translator. By a Resolution of the Government dated 17th March 1988 the post of Translator was equated with the post of Senior Translator and Interpreter in the Bombay High Court. A corrigendum dated 27th May 1988 was issued by the Government of Maharashtra that the post of Translator in the Government Resolution dated 17th March 1988 should be read as equated with the post of Senior Translator/Superintendent in the Bombay High Court. Thus, on the day the petitioner was compulsorily retired, the petitioner was holding the post equated

with the post of Senior Translator/Superintendent.

4. Mr. S.G. Dessai, the learned senior counsel appearing for the petitioner, has urged before us:-

(1) That since the petitioner had not entered the Government service as a gazetted Government servant before attaining the age of 35, Rule 10(4)(a)(i) would not apply to the case of the petitioner and the impugned notice of retirement purporting to have been issued under the aforesaid Rule was invalid.

(2) The post of Senior Translator/Superintendent which was held by the petitioner prior to his retirement had not been classified as a Class II post and, therefore, there was no material to hold that the petitioner was a gazetted Government servant.

(3) Subsequent to the retirement of the petitioner, by virtue of the Judgment of the Division Bench of Panaji in Writ Petition No. 26 of 1995, **V. Thankappan v. The State of Maharashtra and another**, there was a revision in the pay scales and the revised pay scales had not been paid to the petitioner alongwith the notice of retirement and, therefore, on this count

the notice of retirement was bad in law.

5. As against this, the learned Advocate General Mr. A.N.S. Nadkarni, on behalf of the respondents, has urged before us:-

(i) That Rule 10(4)(a)(i) does not contemplate that initially a person should be appointed in the Government service on a gazetted post. According to the learned Advocate General, the said provision contemplates the appointment in Government service before the age of 35 and giving the right to the Government to retire the said person after attaining the age of 50 years.

(ii) It is urged before us that the post which the petitioner was holding, that is, of Translator was equated to the post of Senior Translator/Superintendent and the posts of Senior Translator and Superintendent are Class II gazetted posts.

(iii) It is also urged before us that the petitioner had been paid three months salary and allowances to which he was entitled to on the date on which the petitioner was served with the notice. The notice cannot be faulted on the ground that the

petitioner had not been paid the revised salary, which admittedly, was revised subsequent to the retirement of the petitioner. It is, thus, submitted before us that there is no merit in the petition and the petition deserves to be dismissed.

6. In order to appreciate the rival submissions of the parties, it is useful to make a reference to Rule 10(4)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'the Rules'), which reads as under:-

> "10(4) Notwithstanding anything contained in sub-rules (1) and (2) of this rule, the appropriate authority, if it is of the opinion that it is in the public interest so to do, by giving *[notice of three months] in writing in Form 30 or in Form 31, as the case may be, or three months' pay and allowances in lieu of such notice, have the absolute right to retire-
>
> (a) any Gazetted Government servant under the rule making control of the State Government:-
>
> (i) if he had entered government service under any government in India, before attaining the age of thirty-five years, after he has attained the age of fifty years, and ..."

7. A perusal of the abovequoted provision would show that the appropriate authority has the absolute right to retire, if it is of the opinion that is in the public interest to do so, by giving notice of three

months or three months pay and allowances in lieu of such notice, any gazetted Government servant, if he had entered the Government service before attaining the age of 35. The right to retire a Government servant can be exercised after he has attained the age of 50 years. A bare perusal of this provision would clearly indicate that Sub-Rule (4)(a)(i) of Rule 10 does not contemplate that the initial appointment of a person in Government service should be on a gazetted post. In other words, in order to invoke the right to retire a Government servant under Sub-Rule (4)(a)(i), it is not necessary that the Government servant should have entered the Government service on a gazetted post. All that Sub-Rule (4)(a) contemplates is the entry in the Government service before attaining the age of 35. The right, therefore, to retire a gazetted Government servant under Rule 10(4)(a)(i) is only that he should have entered the Government service before attaining the age of 35 and can only be retired after he attains the age of 50 years. A perusal of Sub-Rule (4)(a)(i) would also make it clear how nebulous this submission of the petitioner is. Rule 10(4)(a)(ii) reads as under:-

> "in any other case, after he has attained the age of fifty-five years;"

8. A bare perusal of this provision would show that a gazetted Government servant could be retired

under this provision if he has entered the Government service beyond the age of 35. However, the right to retire can be exercised only after he has attained the age of 55 years. Thus, the difference in Sub-Rule (4)(a)(i) and Sub-Rule (4)(a)(ii) is the initial age of entering in Government service and the age at which the Government servant can be retired. A plain reading of these provisions do not even remotely indicate that in order to exercise the powers of compulsorily retiring a gazetted Government servant, he must have initially entered the Government service on a gazetted post. We, therefore, do not agree with the submission advanced on behalf of the petitioner in this behalf.

9. Mr. Dessai, the learned senior counsel on behalf of the petitioner has placed strong reliance on the Judgment of the Apex Court in **A.L. Ahuja v. Union of India,** (1987) 3 S.C.C. 604. Reliance is particularly placed on paragraph 5 of the aforesaid Judgment, which reads as under:-

> "...The appropriate authority is entitled to exercise power under clause (j) in the case of a government servant in Class I or Class II service or post where he entered into service before attaining the age of 35 years after the said servant attained the age of 50 years; and in other cases after he has attained the age of 55 years. In the instant case, the petitioner was promoted as officiating Assistant Engineer which is a Class II post on

> May 25, 1954 and continued to hold that post when the order of compulsory retirement was passed. By May 25, 1954 the petitioner had not attained the age of 35 years."

10. Relying on this paragraph. according to Mr. Dessai, the Apex Court has held that the petitioner in the case cited Supra was holding a Class II post before attaining the age of 35 years. The learned counsel, therefore, urges that the initial entry of a Government servant should be on a gazetted post in order to attract the provision of Rule 10(4)(a)(i). The ratio of the case is not what Mr. Dessai wants us to read. The Apex Court was not examining a challenge in the nature of which is raised in the present petition. In paragraph 4 the Apex Court has also not held that in order to attract the provisions relating to retirement of a gazetted Government servant, he should have entered the Government service on a gazetted post before the age of 35. The aforesaid authority, therefore, does not assist the petitioner in advancing the submission which is made.

11. It is next urged by Mr. Dessai that the petitioner had initially been appointed to the post of Translator, which was a Group 'C' Non-Gazetted post and which is evident from the Schedule II appended to the Notification dated 27th August 1976, which is Exhibit P-6 to the petition. Relying on this Notification it is, therefore, urged before us that the post of

Translator was thereafter equated to the post of Senior Translator/Superintendent and the said post, that is, the post of Senior Translator/Superintendent has not been classified as a Class II Gazetted post and, therefore, the petitioner was not holding a Class II Gazetted post and the notice seeking to retire the petitioner in terms of Rule 10(4)(a)(i) of the Rules is invalid. On this ground, therefore, it is urged before us that the notice is bad in law and deserves to be quashed and set aside.

12. Mr. Nadkarni, the learned Advocate General appearing for the respondents, has submitted before us that the post of Translator, which the petitioner was holding, was equated to the post of Senior Translator/Superintendent and the posts of Senior Translator and Superintendent are Class II Gazetted posts and, therefore, the notice cannot be faulted on this count. He has also drawn our attention to the Judgment of the Division Bench of this Court in V. Thankappan v. The State of Maharashtra and another in Writ Petition No. 26 of 1995, wherein the petitioner, who was working as a Senior Translator/Superintendent, had sought for revision of his pay scales equivalent to the pay scales given to the Superintendents and Senior Superintendents on the ground that the nature of work done by the Senior Translator/Superintendent was

identical to the work done by Superintendents and Senior Superintendents. The learned Judges of the Division Bench came to the conclusion that the petitioner in the Judgment cited supra has been working as a Superintendent irrespective of the designation which he holds and has been discharging the same duties and responsibilities like other Superintendents, which cadre had been merged in the cadre of Section Officers, the petitioner was entitled to be given the revised pay scales as applicable to the Superintendents and Senior Superintendents.

13. It is admitted by the learned counsel appearing for the petitioner before us that this revised pay scale was made applicable to the petitioner, who, by the time that Judgment was pronounced, had been retired from service by virtue of the impugned notice.

14. Mr. Dessai, the learned counsel on behalf of the petitioner, has also placed reliance on **Indian Railway SAS Staff Association and others v. Union of India and others,** (1998) 2 S.C.c. 651 to urge before us that classification of posts into Gazetted and Non-Gazetted cannot be done purely on the basis of scale of pay and, therefore, according to him, since the post of Senior Translator/Superintendent had not been classified as Class II Gazetted posts, the petitioner

could not have been retired with the aid of Rule 10(4)(a)(i).

15. As pointed earlier by us the designation of the post of Translator on the Panaji Bench, which the petitioner was holding, came to be re-designated and equated with the post of Senior Translator/Superintendent. In the affidavit filed by the Additional Registrar it is stated as under:-

> "There is no post of Senior Translator/Superintendent on the establishment of the Bombay High Court. Infact, the post of Senior Translator and the post of Superintendent are two different posts. It is however material to note that both these posts are Class-II Gazetted posts. Therefore after the re-designation of the posts of Translator on the establishment of Panaji Bench as Senior Translator/Superintendent, the same was classified as Class-II gazetted posts for all purposes. Therefore the petitioner became a Class-II Gazetted officer with effect from the equation and re-designation of the posts of Translator from 30-10-1982 as the above mentioned G.R. was given retrospective effect."

16. In view of the fact that the post of Translator was equated with the post of Senior Translator/Superintendent, which post is classified as Class-II Gazetted post, there is no force in the submission advanced on behalf of the petitioner that he was not holding a gazetted post when the notice impugned

in this petition was served on him.

17. Lastly, it is submitted that though the petitioner had received three months' salary and allowance when the notice impugned in the petition was served on him, he had not been paid the salary and the allowance which was payable to persons holding the post of Superintendent. According to the petitioner, by virtue of the Judgment of the Division Bench of this Court in Writ Petition No. 26 of 1995, he had been paid the arrears after he was retired from service. Thus, according to him, there is a total non-compliance of the mandatory provisions and the notice is rendered bad because he was not paid three months' salary and allowance, which he was legally entitled to receive.

18. The petitioner has been paid three months' salary and allowance in lieu of the notice period. He has been paid the salary and the allowance which he was drawing at the time of his retirement. It is true that by virtue of the Judgment of the Division Bench of this Court in V. Thankappan's case (supra), the Division Bench of this Court had made the revised pay scales applicable to Senior Translators/Superintendents. The Judgment in V. Thankappan's case was delivered on 31st August 1995, that is, much after the retirement of the petitioner. The petitioner has received the benefit of

the revised pay scales. Rule 10(4) of the Pension Rules contemplates the payment of pay and allowance in lieu of notice. The payment of pay and allowance which is contemplated in Rule 10(4) is the pay and allowance which the government servant was drawing on the date of his retirement. It does not contemplate payment of salary and allowance which may subsequently be revised and paid. If the Government servant is paid 3 months' pay and allowance which he was actually drawing on the date of his retirement, there ie sufficient compliance with the provision of Rule 10(4). Subsequent revision in the pay scales would not render the notice bad in law if the Government servant was paid 3 months' pay and allowance which he was actually drawing on the date of his retirement. Thus, according to us, there is no force in this submission of the petitioner.

19. We have given our anxious consideration to the rival submissions advanced before us and it is our considered opinion that there is no merit in the petition and the petition deserves to be dismissed.

20. In the result, therefore, the petition is

dismissed with no order as to costs. Rule stands discharged.

(V.C. DAGA)
JUDGE.

(P.V. HARDAS)
JUDGE.

ed's.